IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Revn. No.1520 of 2000
Date of Decision: April 27, 2007

KRISHAN LAL

.....PETITIONER

VERSUS

BABU AND OTHERS

.....RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE A.N.JINDAL

PRESENT: - Mr. Sanjeev Gupta, Advocate for the petitioner.

Mr. Rajesh Gupta, Advocate
for respondent No.1 to 5.

Ms. Shalini Attri, Assistant Advocate General,
Haryana for respondent No.6.

. . .

A.N.JINDAL, J

Legality of the order dated 27.09.2000 passed by the learned Additional Session Judge, Karnal dismissing complaint and upsetting the order dated 25.04.1998 summoning the respondents has been called in question by the complainant/revision petitioner(herein-after referred to the petitioner). The facts in the background of the case are that the petitioner (herein-after) preferred a complaint against the respondents under Sections 384/383/386/390/392/148/149/506/120-B IPC on the allegations that he had purchased a motorcy-cle bearing No.HR-05-D-1056 from his cousin Balinder son of Hari Pal for a sale consideration of Rs.22,000/-. The aforesaid motorcycle was already hy-pothicated with the Mortgage Bank, Gharounda. On 10.08.96, he handed over the aforesaid motorcycle to Balinder alongwith Rs.36,000/- for depositing the same in the aforesaid bank. However, the accused forcibly snatched the motorcycle as well as the amount from Bal-

inder when he was on his way to the Mortgage Bank. The complainant also applied under Section 482 Cr.P.C before the Hon'ble High Court of Punjab and Haryana, Chandigarh for direction to register a case but after dismissal of the Criminal Miscellaneous petition on 28.01.98, he filed the complaint on 31.03.1998 before the Judicial Magistrate Ist Class, Karnal.

After recording preliminary evidence of Balinder(CW1), Krishan Lal complainant(CW2), Shadi Mohd.(CW3) with Zile Singh(CW4), and finding prima facie case against the accused, the trial Court issued the process.

Feeling aggrieved, by the impugned order, the accused preferred a Revision Petition which came up for hearing before the Additional Session Judge Karnal, who after examining the case from all the corners, accepted the revision petition and dismissed the complaint. Hence this revision petition.

I have heard Mr. Sanjeev Gupta, Advocate, for the revision petitioner and Ms. Shalini Attri, Assistant Advocate General, Haryana and Mr. Rajesh Gupta, Advocate, for the respondents and have perused the record of the case. Being fully conscious and aware of the law pertaining to the appreciation of evidence at the Revisional stage and also being aware of the fact that sometimes the frivolous complaints are filed and after examining some witnesses, who give imaginative version suiting to the complainant, and consistent with the contents of the complaint. Resultantly the order of summoning is passed in a mechanical manner which sometimes affects the valuable right and liberty of the innocent persons, therefore, law has imposed a serious obligation on the Courts to scrutinize the complaint and the witnesses very carefully to examine if a prima facie case against the accused is made out to issue the process against them.

Keeping in view the aforesaid parameters, it would not be irrelevant to state here that the peti-

tioner has failed to bring on record sufficient evidence convincing the mind of this Court to issue the process against the respondents. Complainant in this case is not an eye witness to the occurrence. Two eye witnesses namely Shadi Mohd.(CW3) and Zile Singh(CW4) respectively have made vague statements. Both of them do not name the accused specifically and they have not attributed any specific part to any person out of the five accused. It is not disclosed either in the complaint or by the witnesses as to who signalled Balinder to stop and who threatened him and who snatched the bag containing money. Zile Singh(CW4) and the complainant do not disclose the time and place of occurrence. These witnesses also did not disclose the place of occurrence. As regards the testimony of Krishan Lal, he is not an eye witness to the occurrence. He even does not give the date when the occurrence took place as regards Balinder who was actually robbed. He also does not give the date time and place of incident. While describing the incident Balinder stated as under:

> "The accused snatched the motorcycle and money by stabbing him in the way, thereafter, he reported the matter to the police but no action was taken."

The statements of other witnesses are also identical. That apart, there is an inordinate delay in lodging the complaint. The alleged occurrence in this case took place on 10.08.1996 but the complaint was preferred on 31.03.98. The counsel for the petitioner has tried to explain the delay, while stating that first of all he had filed the complaint before the SHO but he was not paid any heed, thereafter, he moved the application before the High Court under Section 482 Cr.P.C which was dismissed on 28.01.98. Therefore, the delay in lodging the complaint stands explained.

Having examined the aforesaid contentions, I am constrained to hold that the petitioner has failed to shift the onus. The occurrence took place on 10.08.96 before filing the application in the Hon'ble

High Court of Punjab and Haryana. In the year 1997, the complainant came to know that no case has been registered against the accused. Had he come to know about non-registering of the case in the year 1997 then appropriate remedy for him was to lodge the complaint but he continued wasting time by lodging the application before the Hon'ble High Court. In any case, the application was also dismissed by the Hon'ble High Court on 28.01.98 but still this complaint was filed after a delay of 2 months and 3 days i.e. on 31.03.98. The said delay also stands unexplained.

I have scanned through the impugned order. The same is well versed and it does not suggest any such illegality, much less any perversity, warranting interference of this Court while sitting in the present revision

Consequently, finding no merit in the revision petition the same fails and is hereby dismissed.

(A.N.JINDAL)
JUDGE

April 27, 2007
Ruchika